

**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)**

**COMPLETE STATEMENT
OF**

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DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND LEGISLATION)**

FOR THE HEARING BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
SACRED SITES AND LANDS PROTECTION**

**ROOM 485, RUSSELL SENATE OFFICE BUILDING
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INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I am George S. Dunlop, and I am here today in my role as Deputy Assistant Secretary of the Army for Civil Works (Policy and Legislation). I am pleased to be here today to testify on the matter of sacred sites and lands protection. I am accompanied by Mr. Chip Smith, Assistant for Environment, Tribal and Regulatory Affairs in the Office of the Assistant Secretary of the Army for Civil Works. The Army is pleased to collaborate with the Sacred Lands Protection Coalition established by the National Congress of American Indians on this very important matter.

Administration View

On November 12, 2001, President George W. Bush, by Proclamation, stated that the strength of our Nation comes from its people and that the Native peoples of North America, including Alaska, played a unique role in the shaping of our Nation's history and culture. American Indians and Alaska Native cultures have made remarkable contributions to our national identity that enliven and enrich our land. As we move into the 21st century, American Indians and Alaska Natives will continue to play a vital role in maintaining our Nation's strength and prosperity.

The Proclamation acknowledged the sovereignty of Tribal governments, and set forth a commitment to stimulate economic opportunities for reservation

communities. The Department of Defense, the Department of the Army, other military departments, and Federal agencies are working hard to build more effective day-to-day working relationships. Our responsibility is to work with Tribes to address concerns about sacred sites and lands that are affected, or could be affected, by Army Civil Works activities. This goal is consistent with the President's commitment to help preserve their freedoms, as they practice their religion and culture.

Army Corps of Engineers

Historically, we have not had the opportunity to testify before the Senate Committee on Indian Affairs. Therefore, I will begin with a brief summary of our missions and organization. The Army Corps of Engineers provides quality, responsive engineering and environmental services to the Nation during times of peace and war. We plan, design, build and operate water resources and other civil works projects. We design and manage the construction of military facilities in the United States and overseas as well as support contingency operations. We provide real estate services within the United States and overseas to Defense agencies as well as direct support to contingency operations overseas. Additionally, we provide design and construction management support for other Defense agencies, other Federal agencies, State, Tribal and local governments, and international assistance programs. Our extensive research and development capabilities support military engineering, terrain and geospatial systems, installations and environment and water resources from the coldest regions of the earth to the hottest.

Within the Corps headquarters, day-to-day management of efforts in support of military facilities and operations at home and abroad, as well as much of our support for others, is managed by the Director of Military Programs. The day-to-day management of the Army's Civil Works program is done by the Director of Civil Works. Both of these individuals report to the Chief of Engineers, who in turn reports to various Assistant Secretaries of the Army, the Secretary of the Army, and the Chief of Staff of the Army, depending on the mission being accomplished. For the Civil Works program, the Chief of Engineers reports to the Assistant Secretary of the Army for Civil Works, who has responsibility for policy oversight of the Civil Works Program.

The various Civil Works authorities and programs authorized by Congress apply to the 50 States, District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands and the various trust territories in the Pacific. Civil Works projects, programs and activities are executed by 38 Corps of Engineers districts, under the oversight of eight divisions, which have been assigned Civil Works responsibilities. Civil Works activities focus primarily on water and related land resources issues, in the areas of flood damage reduction, navigation,

environmental and ecosystem restoration and protection, hurricane and storm damage reduction, recreation, natural resources management, water supply, and hydropower.

How Army Civil Works Might Affect Sacred Sites and Lands

Although the Corps has the potential to affect sacred sites and lands by both Civil Works and Military Programs activities, my testimony focuses on the Civil Works activities of the Corps, how they can affect sacred sites and lands, and what we are doing to address these issues within the Civil Works Program. Civil Works activities may affect sacred sites and lands in three basic ways.

First, the Corps has jurisdiction over almost 12 million acres of land and water resources that were acquired over the past 100 years primarily for flood protection, navigation, and multiple purpose projects. For example, the Corps acquired nearly 1 million acres of land for the Upper Mississippi River Navigation System, which extends from St. Paul, Minnesota, to St. Louis, Missouri. Another example is the Missouri River Pick-Sloan Project, a system of six large reservoirs and channels extending from Fort Peck, Montana, 961 miles southeast, to the Gavins Point Dam in South Dakota. A total of 3.1 million acres of land, including 350,000 acres of Indian land, was acquired for the Pick-Sloan Project.

The Corps has operation and/or maintenance responsibility for well over 1,000 projects. Of these, the Corps operates on a day-to-day basis over 500 major lake and river projects, most of which include adjacent lands. These lands contain over 60,000 known archaeological and sacred sites, about 80 percent of which are associated with Indian Nations. The Corps estimates that 25 percent of their projects have the potential to affect directly the treaty and trust resources of about 90 Tribes in the lower 48 states, most of whom have reservation lands. Sacred sites and lands were, in many cases, affected by initial project construction, and continue to be affected by project operations. Impacts at completed projects are caused principally by erosion, exposure to the elements, water inundation and retreat, and vandalism. Although Alaska Natives do not have reservation land, Civil Works activities, especially under the Regulatory Program, affect villages and the resources upon which they depend for subsistence.

Another way Corps activities can affect sacred sites and lands is by the implementation of water resources projects with non-Federal project sponsors, including Tribes. Typically, non-Federal sponsors acquire the lands, easements and rights-of-way necessary for project implementation, and these sponsors subsequently are responsible for operating and maintaining completed projects. Sacred sites and lands could be affected by project planning, construction or operations. The Corps takes these impacts into account prior to construction by complying with the National Environmental Policy Act and all historic preservation

laws. The objective is to identify resources, evaluate their significance, and avoid affecting them adversely. Unavoidable impacts are mitigated primarily by recovering and preserving information.

The third way in which Corps activities might affect sacred sites and lands pertains to the Corps Regulatory Program. Under the authorities provided by the Rivers and Harbors Act of 1899 and the Clean Water Act, as amended, the Corps evaluates and issues permits for activities in navigable waters, and waters of the United States, including wetlands. Over the past few years, the Corps has provided written authorizations for about 90,000 activities each year. The Corps complies with environmental and historic preservation laws as part of its permit evaluation process, and works with Tribal governments to avoid or minimize impacts, many on private lands.

Army Civil Works and Indian Affairs

Now I would like to discuss Indian Affairs activities for the Army Civil Works Program. The Corps has a clear and consistent record of working to improve relationships with Indian Nations. Over the past ten years, the Corps has spent approximately \$200 million on Indian Affairs activities. These funds were used for compliance with the National Historic Preservation Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act and to implement projects benefiting Indian tribes, their rights and lands.

A heightened effort to address the challenges of government-to-government relations began in April 1994 when the President issued a Memorandum for the Heads of Executive Departments and Agencies entitled *A Government-to-Government Relations with Native American Tribal Governments*. This memorandum signaled the beginning of a new era in working with Tribes as sovereign governments.

In response to this memorandum, Army Civil Works established a Native American Inter-Governmental Relations Task Force (Task Force) to develop recommendations on opportunities to improve government-to-government interactions with Federally recognized tribes. Between February 1994 and June 1995, Task Force members, Corps Commanders, and staff met with government representatives from 186 of the Federally recognized tribes in the lower 48 states. Nineteen workshops were held and there were over 550 tribal participants.

In August 1996, information from the workshops was published by the Corps-Institute for Water Resources in a two volume report entitled *Assessment of Corps/Tribal Intergovernmental Relations*. The report contains a series of recommendations for improving relations and enhancing the Corps' ability to work with Indian Nations. The Task Force was reconvened in 1997 to assess the progress being made toward implementing the recommendations of the report. This performance evaluation benefited from new information obtained from interactions with Tribes, and information obtained by our participation on Department of Defense Native American and Alaska Native policy and curation task forces.

As a result of the cooperative efforts and extensive learning process described above, in February 1998, the Chief of Engineers published Policy Guidance Letter No. 57, *Indian Sovereignty and Government-to-Government Relations with Indian Tribes*, as interim guidance. Included with the guidance were *Army Civil Works Tribal Policy Principles* which explicitly acknowledge our unique relationship with Indian Tribes as sovereign Nations, affirm that Tribes retain their inherent rights to self-government, and mandate consultation prior to

final decision making. Using the *Principles*, the Corps was directed to explore, with renewed vigor, opportunities to remove impediments to working effectively with Tribal governments on matters involving trust resources, treaty responsibilities, and Tribal rights. A copy of the *Principles*, which are fully consistent with the Department of Defense Native American and Alaska Native Policy, is attached to my written statement.

In 2000, an Indian Affairs working group was convened to discuss challenges and opportunities. Participants included representatives from my office, Corps Headquarters, divisions, districts, and laboratories. The resulting product was a concept paper entitled *USACE Tribal Nations Strategy*. The *Strategy* identified eight broad goals related to infrastructure, partnering, economic development, policy and legislative needs, training, communications, and accountability. The *Strategy* reflected the level to which the Corps has moved forward in its Indian Affairs efforts over the past decade.

In addition to the efforts noted above, Army Civil Works has interacted with nearly 100 Tribal governments on a wide range of topics, including resource management and protection, land transfers and leases, infrastructure needs, training, consultation practices, and water resources projects of various kinds. To meet the challenge of effective communication and consultation, the Corps has taken two very positive steps to bolster support for Indian Affairs. First, over 70 employees across the country have been designated as Native American Specialists or Coordinators (points-of-contact). These individuals come from a broad array of backgrounds and disciplines, including engineers, biologists, outdoor recreation planners, attorneys and archeologists. They have chosen to do this work and share a common desire to improve relations with Indian Nations. Secondly, the Corps has begun to hire and use the services of formally designated Native American Liaisons, individuals who by background, training, or both, have the unique expertise necessary to work with Indian people. Most of the Native American Liaisons are Indian, and those that are not typically have a long history of successfully interacting with Indian people. The Specialists, Coordinators, and Liaisons serve to advise Commanders and staff, help improve understanding, build relationships, and are an important points of entry for Indian people trying to work with the Army Civil Works program.

In 2001, the Corps established a *Tribal Issues Group (TIG)* in its Headquarters to support the Specialists, Coordinators, and Liaisons, or any other element of the Corps that requires support. The TIG is comprised of representatives from most of the major functional areas in the Corps, such as engineering, planning, operations, real estate, regulatory, and counsel. These staff are available to help identify and resolve policy issues or provide guidance.

Legislative Initiatives

Now I would like to briefly discuss several key legislative initiatives. The Administration's proposal for a Water Resources Development Act (WRDA) of 2000, contained two provisions specifically developed to benefit Indian Nations. Congress enacted both provisions.

Section 203 of WRDA 2000, the Tribal Partnership Program enhances the Corps authority to address Tribal water and related land resources needs. The program focuses on flood protection, environmental restoration and protection, and preservation of cultural and natural resources. There are several unique features of this authority. It acknowledges that natural and cultural resources are, for most Indian people, inextricably linked. Thus, the Corps will be able to formulate integrated natural and cultural resource projects for a whole host of purposes, including projects related to the protection of sacred sites and lands, and for improvements related to fish and wildlife species. The Corps may provide credit towards the Tribal cost share for in-kind contributions such as materials, facilities, services, studies, supplies, and traditional cultural knowledge, if the Secretary of the Army determines that the in-kind contributions will facilitate completion of the study. This aspect of the provision acknowledges the important contributions Tribes can make, and enhances the ability of Tribes to collaborate with Army Civil Works. And, finally, the section indicates that any cost sharing agreement for a study shall be subject to the ability of the Tribe to pay. These ability to pay rules are under development.

The Corps-Institute for Water Resources recently published a report entitled *Tribal Partnership Program: Issues Relevant to Working with Native Americans and Alaska Natives on Section 203 Studies*. A copy of this report has been provided to the Committee for information. The report covers cooperating with other Federal agencies, policy and implementation issues, opportunities to work with Tribes, program management issues, and future needs.

Section 208 of WRDA 2000 provides the Corps with the discretionary authority to rebury repatriated remains on lands under their jurisdiction and also provides the authority to transfer those lands to Tribes for their use as cemeteries. In May 2001, the Corps Headquarters issued guidance directing Corps Commanders to immediately begin the process of identifying suitable lands at Civil Works projects for the reinterment of Native American remains originally or inadvertently discovered on project lands, and which have been rightfully claimed by a lineal descendant or Indian tribe. The guidance also states that the Corps will work with the Bureau of Indian Affairs in those circumstances where Tribes or lineal descendants request that reburial areas be transferred to them for use as a cemetery. Recovery, preparation and reburial costs will be performed at 100 percent Federal expense.

Training

Through training, Army Corps of Engineers senior leaders are becoming better informed and more highly sensitized to Indian Affairs. New Commanders for Corps districts and divisions are required to attend a New Commanders Course. A part of the course has been developed to focus on working effectively with Indian Nations, and provides information on historical developments, Tribal sovereignty, legal requirements, and recommendations for effective consultation with Tribal representatives, governments, and communities.

In the past five years, approximately 500 Corps employees (environmental scientists, resource managers, operations specialists) have attended a 40-hour training session on cultural resources, which includes eight hours of training related to the Native American Graves Protection and Repatriation Act.

The Corps St. Louis District has developed training entitled *Native American Cross-Cultural Awareness Workshop*. The class covers legal definitions, Indian/non-Indian relations, cultural awareness, laws, regulations, executive orders, and policies. The workshop is designed to provide a basic legal and historical framework for the unique relationship between Army Civil Works and Indian Nations.

In Alaska, the District Alaska Native Liaison Office, in cooperation with other Federal agency liaisons, created a two-day Alaska Native Historical and Legal Workshop for Federal employees. In the past year and a half, the Federal Alaska Liaison team has trained over 400 Federal employees in Alaska, including over 150 Corps employees, 73 of whom are involved in Army Civil Works activities. The training sessions have received very positive reviews from attendees and the course is now endorsed by the Federal Executive Administration as required for any new Federal employee working in Alaska.

In April 2002, a member of my staff, the District Engineer from Walla Walla District, and twenty members of his staff attended a *Native American Cultural and Natural Resources Management Workshop* hosted by the Confederated Tribes of the Umatilla at Indian Lake, Idaho. This *Aexperiential*® workshop is a new approach to training in that the participants develop personal understandings of Tribal values and issues by living, for a week on the reservation in a teepee camp. In addition to talks and dialogues around camp fires, Corps staff participated in setting up and maintaining the camp, making traditional tools, learning about the Tribe's world view, the importance of the earth and its life forms, and how to work together as a Tribal community, in snow, wind, and sun. Both the Tribe and Corps staff agreed that the workshop was a tremendous success. Additional workshops are being planned.

Protection of Sacred Sites and Lands

Now I would like to talk about several initiatives that relate directly to the protection of sacred sites and lands.

In June 1998, the Corps issued a Policy Guidance Letter No. 58 (attached) implementing Executive Order 13007, *Indian Sacred Sites*. A sacred site is defined as any specific, discrete, narrowly delineated location on Federal lands that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established spiritual significance or ceremonial use. This guidance directs Corps Commanders to accommodate access to, and ceremonial use of, Indian sacred sites by Indian spiritual practitioners. It directs the Corps to avoid adversely affecting the physical integrity of sacred sites, and to maintain confidentiality of information pertaining to such sites. Sacred sites are widely dispersed across the landscape. They can include burial grounds, springs, mountains, caves, rock shelters, tipi rings, rock rings, petroglyphs and pictographs, ground figures, and places on public lands where spiritual activities have occurred, are occurring, or could occur in the future. Corps Commanders are directed to initiate consultation for activities that may affect sacred places. The guidance also explains that ceremonial use may include the collection of plants, the clearing of habitat, the gathering of animal parts or feathers and other types of resource-consuming activities. Sacred areas may be closed to the public during particular times of the year. Corps Commanders may consider requests to permanently close areas to the general public.

Additionally, the Corps has revised its *Planning Guidance Notebook*, to include directives on relations with Indian Tribes that are entirely consistent with the Department of Defense Native American and Alaska Native policy. The regulations controlling activities at hundreds of Corps operating projects contain directives that enhance our relations with American Indian and Alaska Native groups. For example, the Environmental Stewardship Operations and Maintenance Policies, contains sections on Tribal consultation and repatriation that have strong regulations requiring interaction with Tribal members, governments, and communities.

At the regional level, the Alaska District and a number of Corps divisions have developed policies and other resources specific to their missions and Tribal contacts. There are 227 Federally-recognized Alaska Native Communities and many Civil Works activities affect Tribal interests in one way or another. The Alaska District has a full time Native American Liaison, who is Indian, to facilitate consultation, natural and cultural resource protection, and cross-cultural interactions. The Northwestern Division covers the Northwest salmon region, with its 42 Tribes, and the Missouri River basin with 28 (27 with reservations)

Tribes. The Division employs a full time Native American Liaison, and each of the Division's five districts also employ Liaisons. Additionally, the Northwestern Division also interacts with 19 aboriginal Tribes with Tribal governments located outside the regional boundaries. A significant portion of their work relates to the protection of sacred sites and lands. The Northwestern Division has developed its own Native American Policy regulation that outlines roles and responsibilities for Corps staff, and also a Guidebook that is a compendium of resources and guidance related to working in Indian Country, including references on the protection of sacred sites and lands.

An important aspect of the protection of sacred sites and lands is the proper curation and management of collections acquired by the Corps over the past 100 years. The Corps St. Louis District Mandatory Center of Expertise for the Curation and Management of Archaeological Collections recently completed the *Department of Defense and U.S. Army Corps of Engineers Curation Options Project* which assessed the state of collections, made recommendations for the proper care and rehabilitation of collections, and identified and evaluated potential partnership curation facilities, such as museums, universities, and state-funded institutions that could properly house these important collections. For many years, proper curation of these materials was not integrated into cultural resource programs and their funding. Long-term collections care has, in most cases, been inadequate. The two reports developed by the Corps provide options for addressing this challenge for the benefit of Indian people and our Nation as a whole.

The Corps has amassed one of the largest collections of archaeological materials, currently estimated to be over 140,000 cubic feet in size (approximately 55 truck trailers full). Within the Corps collections, there are estimated to be the remains of 3,660 Native Americans and there are likely thousands of other cultural objects subject to the provisions of NAGPRA, and that relate to sacred sites and lands. The Corps is working to complete the inventories and assessments required by Native American Graves Protection and Repatriation Act (NAGPRA), and to work with lineal descendants and Tribes to repatriate human remains and associated funerary objects.

The Corps Fort Worth District has prepared a report entitled *Native American Territorial Ranges in the Central Region of Texas* to assist in the management and protection of 25 lakes and 700,000 acres of land (1,100 square miles), including sacred sites and lands. The report, done after consulting with Tribes, provides a reflection of how the Tribes themselves view their own history and territory, and is an important resource to assist with the protection of sacred sites and lands.

Title VI of WRDA 1999 authorized the transfer of specific lands and recreation areas under the jurisdiction of the Army Corps of Engineers to the State of South Dakota and specified Indian Tribes. In moving forward with the implementation of the transfer of lands project, we have undertaken a number of activities to identify and address any issues with sacred sites and other cultural resources on the lands to be transferred. We held quarterly meetings with the affected Tribes, with invitations to participate extended to other interested Tribes. These meetings were for information sharing and issue resolution. The contractor preparing the EIS for the project had a subcontractor who worked solely on cultural resources, including sacred sites. The contractor and Corps cultural resources experts visited each Tribe a number of times to talk to their cultural resources experts and elders to obtain information on sites of significance to each Tribe. We also contracted directly with a couple of Tribes to complete surveys for Traditional Cultural Properties on lands that were being transferred. The prepared reports are treated as confidential information that is not released without specific approval of the tribes. Known information and preliminary determinations of effect for recreation areas that had development plans were shared with all tribes.

Another ongoing effort that could impact sacred sites and lands is the review of the Missouri River Master Control Manual. While we do not have a separate consultation with the Tribes on sacred sites as part of our Master Manual Review and Update, cultural resources, such as sacred sites, are being discussed with the Tribes in a broader context. The Corps is in the process of identifying Traditional Cultural Properties, including sacred sites, and has contracted with some Tribes to undertake this effort.

Example of Sacred Site and Land Protection

Now I would like to briefly discuss an example of the effectiveness and positive efforts underway by the Corps in consultation and cooperation with Indian Tribes to protect of sacred sites and lands, meet the objectives of the NAGPRA.

In November 1991, three sets of human remains were discovered washing out of a creek bank at then Cooper Lake. The remains at site 41DT16 were excavated in December 1991, as the lake levels were rising rapidly. The remains were relocated to their present resting site (cemetery) in July 1992 when then Caddo Chairman Tony Williams broke ground and reburied those three sets of remains of Caddo ancestors. The area was selected in cooperation with the Caddo Tribe. It was on high ground, below the dam and located near the new Corps Lake Office so that it would not be inundated and the area's security would not be an issue.

In 1997, we renewed the dialogue with the Caddo Tribal Council concerning repatriation and reburial of Caddo remains. In August 1997, Caddo Tribal Council members, the NAGPRA Coordinator, and representatives from the Fort Worth District and the project office met at the site to define the boundary of proposed permanent reburial site, as well as the layout, materials, colors and manner for future reburials at the site. The plan called for minimum disturbance of the site in the process of preparing the circle, divided into quadrants, and the split rail fence to surround the site. The construction of the site was completed in December 1998. At a June 1999 meeting at Cooper Lake between members and representatives of the Caddo Nation, NAGPRA coordinator, and Fort Worth District, staff discussed issues related to responsibility, security and use of the reburial area. It was decided that security of the site was provided by its proximity to the Corps Project Office and that entrance to the area could be regulated from there.

The evening of September 5, 2001, Colonel Gordon Wells, Fort Worth District Commander, and representatives of Operations and Planning Divisions sat down to share a meal with Chairwoman LaRue Parker and other Elders and members of the Caddo Nation. On September 6, 2001, we came together to officially dedicate this area for its special use as a final resting place for Caddo ancestors from the northeast part of Texas. Colonel Wells and Chairwoman Parker conducted the ceremony. Caddo Elders performed the blessing and with smoke from a cedar fire made >Kun >Hah >Yuu >Nah ready as a place for the ancestors remains and spirits to come home and rest. Chairwoman Parker presented the Cooper Lake staff with a Caddo Nation flag. A flagpole has been erected and the flag will fly when ceremonies of repatriation and reburial take place.

Solutions for Effective Protection of Sacred Sites and Lands

Protection of sacred sites and lands can be facilitated by:

- Providing leadership to achieve consistency in the Federal approach to Tribal relations
- Effective government-to-government relations
- Pre-decisional consultation and partnerships
- Resource leveraging and integration of Army Civil Works activities with those of Tribes, Federal agencies and non-governmental organizations
- Completion and effective implementation of project-specific historic preservation management plans
- Providing the appropriate level of staffing and resources

Summary

In conclusion, the Army Civil Works Program has, in the past decade, made significant advancements in the areas of sacred sites and lands protection and coordination with Tribal governments. We must continue to enhance our ability to understand and meet our Federal trust responsibilities, interact with Indian people on a government-to-government basis, and ensure that proper consultation occurs before key decisions affecting Indian people, are made. By living up to our responsibilities as trustees for Indian people, we will be better able to support the economic development and education goals of the President, and to protect the sacred sites and lands that represent the history and the spirituality of Indian people.

Faith Spotted Eagle, a member of the Yankton Sioux Tribe, and member of the women-s Braveheart Society, has been quoted in the press as saying AProtection of our sacred sites is one of the most important and heartfelt priorities for Indian communities@. We have heard similar sentiments from Indian people throughout Indian Country. We must continue to seek to understand this perspective and sentiment, and work with Indian people to find acceptable solutions to sacred site and land protection challenges.

That concludes my statement. I would be pleased to answer any questions you might have.